

## **STAFF REPORT**

Meeting Date: 02/10/06

Agenda Item: 10

To: BEACON Board of Directors

From: Technical Director

Date 02/01/06

**Subject: Army Corps Section 227 Project, Oil Piers Reef.**

### **REQUIRED ACTION:**

- a. Receive Verbal Report on Project Overview and Update
- b. Authorize Executive Director to Approve and Execute a lease with the State Lands Commission.

### **DISCUSSION:**

The Army Corps of Engineers' (USCOE) Section 227 program authorizes the USCOE and its contractors to design and construct innovative shoreline protection projects at several sites around the country. The former Mobil Oil Piers site in Ventura County was selected as Southern California's project site.

The selected project entails the installation of an artificial reef consisting of geotextile (woven plastic) containers that will be stretched out across the sea-bottom and pumped full of sand. The wedge-shaped reef will stretch about 400 feet along the beach and will be located offshore in about 20 feet of water. The top of the reef will just about reach the water surface at extreme low tide.

The purpose of the reef is two-fold: to enhance the width of the beach behind the reef and to create a surfing break across the top of the reef.

### **Project Information:**

Local Sponsor:	BEACON
Federal Sponsor:	USCOE
Designer/installer:	ASR Ltd
Cost to design/install:	\$2.2M
Lead Agency for CEQA:	BEACON
Lead Agency for NEPA:	USCOE
Responsible for cost of design/installation:	USCOE
5 years of post-installation monitoring:	USCOE

The following activities have occurred on this project to date:

1. December 2002 – Conceptual design was completed.
2. August 2003 – After a competitive selection process, the USCOE awards contract to a team headed by ASR Ltd of New Zealand to design, fabricate, and install the artificial reef at the site.



A California Joint Powers Agency

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3. January 2004 – Final design completed.
4. June 2004 – As the local sponsor, BEACON entered into a Memorandum of Agreement (MOA) with the USCOE setting forth project responsibilities for the two entities. The MOA requires that BEACON ultimately be responsible for;
  - a. Repair of artificial reef
  - b. Rehabilitation of artificial reef
  - c. Maintenance of artificial reef
  - d. Possible removal of artificial reef
5. January 2005 – Joint CEQA/NEPA Environmental Document approved by BEACON Board.
6. October 2005 – USCOE receives permit from Regional Water quality Control Board.

### **Future Required Milestones:**

7. April 2006 – State Lands Commission and BEACON Board approve new State Lands Lease.
8. May 2006 – California Coastal Commission issues permit.
9. May 2006 – USCOE issues permit.

### **Other Critical Milestones**

10. Congress approves the Water Resource Development Act (WRDA) Bill which re-authorizes Section 227 allowing project to proceed.
11. Award fabrication/construction contract.
12. Installation of artificial reef.

## **State Lands Commission Lease**

Currently Oil Piers Beach is maintained by ExxonMobile as a condition of the construction of the piers. The maintenance responsibilities are defined through the State Lands Lease granted to ExxonMobile. In 2002 ExxonMobil removed the piers and in October 2005 an environmental document evaluating the options of what to do with the piers foundations (still remaining) was approved by State Lands Commission. This environmental document approves the abandonment of the pier foundations. With this approval, ExxonMobile would be released from their Lease and maintenance of Oil Piers Beach reverts back to the State Lands Commission.

In order for the USCOE to proceed with the Section 227 project at Oil Piers Beach, BEACON must enter into a new lease with State Lands whereby BEACON assumes maintenance responsibilities of the beach. The proposed lease has been reviewed and commented on by BEACON staff and is considered acceptable in its current form (see attached). Key elements of the lease include:

1. Based on language changes submitted by BEACON staff, the lease will only be in effect if the Section 227 project is actually built.
2. The term of the lease is for ten years following construction of the Section 227 Project.
3. Staff is working on obtaining a map attachment to the lease that would define the physical limits of maintenance responsibilities. Currently it is Staff's understanding that beach maintenance limits include:
  - a. The Oil Piers Beach, excluding revetments on either side of the beach

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- b. The access road to the beach starting at the southerly (beach side) right of way line of Caltrans
  - c. The artificial reef constructed under Section 227.
4. BEACON to ensure public access to the beach is maintained and that the beach is kept clean and safe.
5. BEACON to remove the artificial reef and restore the site if required.

### **Liabilities**

A discussion of the various liabilities that BEACON will assume should the BEACON Board approve the Lease and installation of the artificial reef occur are as follows:

#### **General**

BEACON will, as an agency, for the first time assume maintenance responsibilities of a public facility. BEACON has the ability as a Joint Powers Agency to do this.

#### **Beach Use Liability**

The State Lands Lease requires that BEACON ensure public access to the beach is maintained and that the beach is kept clean and safe.

Liability Mitigation:

- Currently Oils Piers Beach has no access from the road to the beach. Beach users must climb over the existing revetment at the back of beach. The only improvements BEACON intends to make initially is the installation of portable toilets thereby limiting the potential for liability
- BEACON will expand its existing insurance to cover physical facilities, heretofore, the underwriting of our liability insurance was based upon having no physical facilities under our control except for during beach replenishment contracting.
- BEACON will have at its disposal a \$100,000 in mitigation fund provided by ExxonMobil.

**Staff's assessment is that Beach Use Liability is acceptable**

#### **Reef Removal Liability**

The State Lands Lease requires that BEACON remove the artificial reef and restore the site if required.

Liability Mitigation:

- Installation of the artificial reef can not proceed without approval by Congress of the new WRDA Bill which includes re-authorization of Section 227, through which this project is authorized. Included in the new WRDA Bill is language that would allow the USCOE to take on the responsibility to remove an installed project (artificial reef in our case) instead of the local sponsor (BEACON). In other words, if the Oil Piers project is installed, then BEACON would negotiate with the USCOE to ensure that BEACON does not carry the burden of removing the reef, should it be required. The USCOE has informally indicated to BEACON staff that they would not leave BEACON holding the bag.

**Staff's assessment is that Liability related to removal of the artificial reef is acceptable**

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### **Reef Repair Liability**

Under the MOA between BEACON and the USCOE, the BEACON is responsible for maintenance of the reef once it has been installed. However, the USCOE is responsible for any reef repairs related to design faults.

Liability Mitigation:

- The MOA defines a collaborative relationship between BEACON and the USCOE to assess and determine the best course of action as it relates to reef repairs. Three general potential scenarios exist, should the reef be damaged:
  - If the damage is determined to be a result of a design error and if the team feels a repair is warranted, then the USCOE would be responsible.
  - If the damage is NOT determined to be a result of a design error and if the team feels a repair is warranted, then BEACON would be responsible.
  - In either cases above the team may decide that a repair is not necessary, in which case neither BEACON or the USCOE would have any liability.
- The nature of likely repairs would entail repairs of tears that have occurred in the geotextile containers. The cost of such repairs are not considered high.
- BEACON will have at its disposal a \$100,000 in mitigation fund provided by ExxonMobil.

**Staff's assessment is that Reef Repair Liability is acceptable**

### **Ocean Use Liability**

The State Lands Lease requires that BEACON assume responsibility for the submerged artificial reef. BEACON therefore has some exposure related to any recreational damages (surfing, swimming etc) and damages to recreational or commercial boating resulting from any conflicts with the artificial reef.

Liability Mitigation:

- Oil Piers was historically a surfing spot and it is envisioned that with the installation of the reef, it will again become a popular surfing destination. Surfing by definition is a dangerous sport, and the installation of an artificial reef is not considered as an added liability to surfers.
- The location of the artificial reef is close enough to the shore to avoid commercial boating.
- BEACON will consider placing reef location buoys to define the outer edges of the reef to alert recreational boating.

**Staff's assessment is that Ocean Use Liability is acceptable**

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### **Summary/Project Status**

- Staff has submitted to State Lands additional changes to the Lease but has not heard back yet.
- Under the new language changes, BEACON would not assume maintenance responsibilities of the beach till the start of reef installation.
- BEACON and State Lands must approve the Lease for the Section 227 project to proceed.
- For project to proceed, the US Congress must approve the Water Resource Development Act (WRDA) Bill which re-authorizes Section 227. No forecast date has been determined.
- If the WDRA Bill is not approved by the end of March 2006, the reef installation will be delayed till Summer 2007.
- It is BEACON staff's opinion that the liabilities to BEACON related to maintenance of Oil Piers Beach and reef are acceptable.